

REMARKS

Applicants and their undersigned representative respectfully acknowledge the time and courtesy of the Examiner, Mr. Patterson, in conducting the Interview of August 12, 2003. The substance of the Interview is reflected in the above amendments and following Remarks.

The Amendments

Claim 21 is amended to incorporate the substance of both claims 31 and 32 therein, thus, more particularly defining the polyolefin (B) utilized in the third layer. Consequently, claims 33 and 34 are canceled. Claim 26 is amended to correct an inadvertent omission in the claim (see page 24, lines 18-35, of the specification). Claims 27 and 37 are amended to address the 35 U.S.C. § 112 rejection, as discussed below. Support for the newly added claims is found in the specification, for example, at page 16, line 34, to page 17, line 1; page 19, lines 1-9; page 8, lines 14-17; and page 23, lines 14-18.

To the extent that the amendments avoid the prior art or for other reasons related to patentability, competitors are warned that the amendments are not intended to and do not limit the scope of equivalents which may be asserted on subject matter outside the literal scope of any patented claims but not anticipated or rendered obvious by the prior art or otherwise unpatentable to applicants. Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Rejections under 35 U.S.C. § 112, Second Paragraph

Of the several rejections under 35 U.S.C. § 112, second paragraph, some are believed to be rendered moot by the above amendments and the rest are traversed for the reasons below.

Regarding the first rejection of claims 21-42 on the basis of the parenthetical designator letters, this was discussed at the above-referred Interview and it is believed to have been agreed that the rejection would be withdrawn. As discussed, the designator letter serve to better define the invention by providing a basis for identifying differing components of the claimed structure. The letters are identifiers and do not otherwise limit the terms. There is nothing to suggest that the identifiers themselves provide any limitation so there should be no confusion as to whether they are limiting. The use of identifier letters is not uncommon in PTO practice, particularly in this art. As examples, reference need only be made to the prior art of record cited against the instant claims. Each of the three patents relied upon for the below-discussed art rejection contain claims which include identifier letters for the different components in their structures. Contrary to making the claims confusing, the identifier letters improve the understanding of the claims. For example, looking at claims 21 and 23, the identifier letters prevent possible confusion between the polyethylene (C1) and polymer (C2) used in the third layer and the polyethylene (D1) and polymer (D) used in the binder. Also, they make it easier in the dependent claims to refer to the correct components. (Note that the rejection as to the EVOH term is no longer applicable since this term no longer appears in the claims.) Thus, this rejection should be withdrawn.

The rejection of claim 27 is rendered moot by the elimination of the term on which the rejection was based.

The rejection of claim 33 is rendered moot by the cancellation of the claim.

The rejection of claim 37 is believed rendered moot by the amendment thereto. The amendment eliminates the term on which the rejection was based and now merely recites the property that the polyolefin is crosslinkable. Thus, it is clear that this is a property of the polyolefin not a recitation of conducting some process step.

The Rejection under 35 U.S.C. § 102

The rejection of claims 21, 27, 31-34 and 40-42 under 35 U.S.C. § 102, as being anticipated by Beuzelin (UK 2288177) is respectfully traversed.

Beuzelin fails to provide any specific description of an embodiment which meets all elements of the claims. Regardless of what Beuzelin may or may not generically suggest (discussed below), it does not provide any example or other description which specifically meets all the claim elements in a sense sufficient to anticipate the claims. Even if the broad generic teachings of Beuzelin were interpreted as encompassing the instant claimed structure, such a generic disclosure is not sufficient to support anticipation. For anticipation, a reference must provide a specific embodiment or specific evidence to suggest that the reference inventors were in possession of an embodiment specifically meeting all the claimed elements. A broad generic disclosure does not “describe” an embodiment therein in accordance with 35 U.S.C. § 102. See In re Kollman et al, 201 USPQ 193 (CCPA 1979). If such a reference were anticipatory, it would not be possible to prove nonobviousness for selection inventions within a generic disclosure. Such is not the state of the law.

Thus, even if the PS/binder/EVOH/binder/PO embodiment disclosed by Beuzelin at page 13, line 10-11, were interpreted as encompassing the possibility that the “binder” encompasses the possibility of a mixture of polyamide and polyolefin and could be interpreted as being a “third layer” of applicants’ claims, such would not be a disclosure

sufficient to anticipate the instant claims. Even if the Beuzelin “binder” encompasses the possibility of a mixture of polyamide and polyolefin, it certainly encompasses many other possibilities which are not such a mixture (see the definition of the binder at pages 3-5 of the reference) and there is no specific description in the reference of an embodiment having the specific PS/binder/EVOH/binder/PO structure and the specific selection of a binder which is a mixture of polyamide and polyolefin.

The failure of an anticipating disclosure by Beuzelin is even more clear in view of the claims as amended. In the current broadest claim (claim 21), the third layer is even more specifically defined in terms of the type of olefin and Beuzelin certainly fails to describe an embodiment specifically meeting these recitations.

In addition to all of the above, applicants urge that Beuzelin could not anticipate the instant claims anyway because:

- the binders disclosed by Beuzelin do not include a “polyamide” component, as that term is used in the instant claims, and/or
- the binder layer of Beuzelin cannot be considered to meet applicants’ recited “third layer.”

As to the first distinction, the Office Action points to the alleged disclosure in Beuzelin that the binder includes “a mixture of polyamide and polyolefin and polyamide (polyamide grafted onto polyolefin..).” But Beuzelin does not disclose a “polyamide” grafted onto a polyolefin and, even if it did, such would not result in a mixture of polyamide and polyolefin. Beuzelin generically discusses, as one possible constituent of its binder, a graft polymer (A4) resulting from cograftering a grafting monomer onto at least one polymer (a), which is a styrene polymer, to which a tackifying resin has been added; see page 4, lines-16-20. The grafting monomer can be, amongst many other possibilities, an amide; see

page 5, line 17, to page 6, line 4. Thus, Beuzelin makes clear that what is grafted in such an alternative is an amide monomer, not a polyamide.

Although the resulting graft polymer could contain multiple grafted amide monomers, it would not be considered a polyamide as that term is normally used in this art and how it is used in applicants' disclosure and the Beuzelin disclosure. The instant disclosure discusses the meaning of the claim term "polyamide" at page 7, line 1, to page 11, line 13. Such meaning does not include the above-discussed graft polymer generically contemplated for the Beuzelin binder. Similarly, Beuzelin discusses the term "polyamides" at page 14, lines 3-8, but not as part of the binder. This definition also does not include the above-discussed graft polymers.

For all of the above reasons, it is urged that a consideration of Beuzelin as a whole in view of what was known by one of ordinary skill in the art should make clear that Beuzelin does not contemplate the use of a polyamide in its binders.

As a separate independent basis for distinguishing Beuzelin, it is urged that the binder of Beuzelin cannot satisfy the "third layer" recitation of the instant claims. In this art, one of ordinary skill in the art would know that a binder layer is distinct from a structural layer and it is clear from the claims that applicants' third layer is a structural layer, not a binder layer. A binder layer is different structurally, i.e., much thinner, and serves a distinct function, i.e., merely to attach the two adjoining layers. Thus, the initial premise for the rejection, i.e., that the binder of Beuzelin serves as the third layer of the claimed invention, is not supported. This distinction is even more evident since the instant claims recite a binder layer separate from the first through third layers (see also claim 22 in this regard). This makes clear that the first, second and third layers of the instant claims are not binder layers.

For each of the above reasons, it is urged that the rejection under 35 U.S.C. § 102 be withdrawn.

The Rejections under 35 U.S.C. § 103

The rejection of claims 22-26, 28 and 39-40 under 35 U.S.C. § 103, as being obvious over Beuzelin, the rejection of claim 29 further in view of Zhang (U.S. Patent No. 5,516,583) and the rejection of claims 30 and 35-37 further in view of Melot (U.S. Patent No. 5,998,545) are respectfully traversed.

The discussion of Beuzelin above is incorporated herein by reference. The same distinctions discussed above apply in traversing this rejection as well. No teaching of record suggest modifying Beuzelin in a manner to modify the above-discussed distinctions to arrive at the claimed invention. Particularly, there is no suggestion in Beuzelin to modify the binders taught therein to provide a polyamide component in the binder. Contrary to suggesting modification of the binder, the principal feature of the Beuzelin disclosure is the particular nature of the binder therein, thus, it would not have been obvious to modify it. Further, it would not have been obvious to provide the particular combination of components of applicants' third layer recited in the instant claims. Finally, it would not have been obvious to modify the binder layer of Beuzelin in a manner which would be considered to meet the third layer (which is not a binder layer) recitation of the instant claims.


The Zhang and Melot secondary references were cited for alleged teachings regarding dependent claim aspects. They were not cited for – and do not teach – modification of the Beuzelin structure in any manner which makes up for the above-noted deficiencies. Thus, their combined teachings with Beuzelin fail to render the claimed invention obvious for the same reasons as discussed above.

For the above reasons, it is urged that each of the rejections under 35 U.S.C. § 103 be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



John A. Sopp, Reg. No. 33,103
Attorney for Applicants

MILLEN, WHITE, ZELANO &
BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

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